

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the matter of a request
for variance by:

Nancy McCann
City of Tampa
305 E. Jackson Street, 5-N
Tampa, Florida 33602

File No. SWV 99-1
City of Tampa

Daryl Smith
Hillsborough County Solid Waste
Management Department
P. O. Box 1110
Tampa, Florida 33601

ORDER GRANTING VARIANCE

The Department hereby gives notice that it is granting a variance to the City of Tampa and Hillsborough County (Petitioners) pursuant to Section 403.201, Florida Statutes (F.S.). Petitioners seek a variance from the provisions of Section 403.708(13)(c), F.S., and Rule 62-701.300(8)(c), Florida Administrative Code (F.A.C.), which prohibit the disposal of yard trash in lined landfills.

FINDINGS OF FACT

1. Petitioner City of Tampa is the owner of the McKay Bay Refuse-To-Energy Facility ("the Facility") which is located in Tampa, Florida. The Facility receives approximately 1,000 tons of Municipal Solid Waste (MSW) each day, of which a significant fraction is yard trash. Solid waste that cannot be processed at

the Facility is diverted to an adjacent transfer station, which is also owned by the City. Waste from that transfer station is then transported to Hillsborough County's Southeast Landfill for disposal. This transfer station also accepts segregated yard trash for recycling. Since most of the City of Tampa's waste stream is burned, the City does not segregate yard trash from the solid waste stream.

2. Petitioner Hillsborough County is the owner of the Southeast Landfill, a Class I landfill located in Hillsborough County. The landfill accepts waste from the City of Tampa and other areas within the County. The landfill does not normally accept significant amounts of yard trash.

3. Petitioner City of Tampa is installing new air pollution control systems and making other major improvements to the Facility in order to be in compliance with state and federal air regulations. It is anticipated that construction and installation of this new air pollution control equipment will cause units at the McKay Bay facility to shut down periodically over the 24-36 month retrofit process. This will result in more waste, including unsegregated yard trash, to be taken to the County's landfill.

4. On March 4, 1999, the City of Tampa filed a request for a variance pursuant to Section 403.201, F.S., to allow it to send yard trash to the Hillsborough County Southeast Landfill

during the retrofit period. The City contended that it would suffer undue economic hardship if it were required to implement a separate yard trash collection program while the Facility was installing the air pollution control equipment. Shortly thereafter, Hillsborough County joined the City in its Petition.

CONCLUSIONS OF LAW

1. The Department concludes that, for the reasons stated in the petition and subsequent correspondence, Petitioners have demonstrated that compliance with Section 403.708(13)(c), F.S., and Rule 62-701.300(8)(c), F.A.C., would create an undue economic hardship, that the hardship is peculiar to the affected property and not self-imposed, and that the granting of this variance renewal will be consistent with the general intent and purpose of Chapter 403, F.S. The Department has therefore determined to exercise its discretion in accordance with Section 403.201(1)(c), F.S., and issue this variance.

2. This variance will allow the City of Tampa to send yard trash, whether mixed with other solid waste or not, to the Hillsborough County Southeast Landfill for disposal. This variance will also allow Hillsborough County to accept yard trash at the Southeast Landfill for disposal.

CONDITIONS

The variance is subject to the following conditions:

1. The City of Tampa and Hillsborough County will remain in compliance with all other permit conditions and rule provisions that apply to both the McKay Bay facility and the Southeast Landfill during this retrofit period.

2. Petitioner City of Tampa shall provide quarterly progress reports to the Department's Southwest District office and the Solid Waste Section in Tallahassee detailing the City's progress towards completion of the retrofit project. Such reports will be due October 1, January 1, April 1 and July 1 for the next two years.

3. This variance may be renewed for an additional period of time, not to exceed two years. A renewal request must include a demonstration by Petitioner City of Tampa that the retrofitting of the facility is being accomplished in a timely manner, and must include a statement by Petitioner Hillsborough County that acceptance of yard trash from the City of Tampa is not having a deleterious affect on the operation of the Southeast Landfill. Petitioners must request any such extension no later than May 1, 2000.

Pursuant to Section 403.815, F.S., you are required to publish at your own expense the enclosed Notice of Proposed Agency Action. The notice shall be published one time only

within 30 days in the legal ad section of a newspaper of general circulation in the area affected. For the purpose of this rule, "publication in a newspaper of general circulation in the area affected" means publication in a newspaper meeting the requirements of Sections 50.011 and 50.031, F.S., in the county where the activity is to take place. Where there is more than one newspaper of general circulation in the county, the newspaper used must be one with significant circulation in the area that may be affected by the permit. If you are uncertain that a newspaper meets these requirements, please contact the Department at the address or telephone number listed below. You must provide proof of publication to the Department at the address listed below as soon as practical after publication.

The Department's Order Granting Variance will be considered final unless a timely petition for an administrative hearing is filed under sections 120.569 and 120.57 of the Florida Statutes before the deadline for filing a petition. The procedures for petitioning for a hearing are set forth below.

A person whose substantial interests are affected by the Department's proposed agency action may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received) in the

Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by other persons must be filed within twenty-one days of publication of the notice or receipt of the written notice, whichever occurs first. The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

(a) The names, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed;

(b) A statement of how and when each petitioner received notice of the Department's action or proposed action;

(c) A statement of how each petitioner's substantial interests are or will be affected by the Department's action or proposed action;

(d) A statement of all material facts disputed by petitioner or a statement that there are no disputed facts;

(e) A statement of the ultimate facts alleged, including a statement of the specific facts which the petitioner contends warrant reversal or modification of the Department's action or proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wants the Department to take with respect to the Department's action or proposed action.

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301.

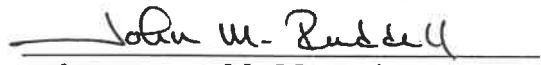
Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means

that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation is not available in this proceeding.

Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order is filed with the clerk of the Department.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


John M. Ruddell, Director
Division of Waste Management
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

CERTIFICATE OF SERVICE

I, the undersigned designated Department clerk, HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail to David S. Dee, Landers & Parsons, P.O. Box 271, Tallahassee, Florida 32302, and to Nancy McCann, City of Tampa, 305 E. Jackson Street, 5-N, Tampa, Florida 33602, and to Daryl Smith, Hillsborough County Solid Waste Management Department, P. O. Box 1110, Tampa, Florida, 33601, on this 12th day of July, 1999.

FILING AND ACKNOWLEDGMENT

FILED, on this date, pursuant to §120.52(11), Florida Statutes, with the designated Department clerk, receipt of which is hereby acknowledged.

Patricia Sanjean
(Clerk)

7/12/99
(date)

Copies furnished to:
Chris McGuire - DEP
Bob Butera - DEP

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF PROPOSED AGENCY ACTION

The Department of Environmental Protection gives Notice of its Intent to grant a variance pursuant to Section 403.201, Florida Statutes (F.S.), to the City of Tampa and Hillsborough County. Petitioners seek a variance from the provisions of Section 403.708(13)(c), F.S., and Rule 62-701.300(8)(c), Florida Administrative Code (F.A.C.), which prohibit the disposal of yard trash in lined landfills. This variance would allow the City of Tampa to send yard trash to the Hillsborough County Southeast Landfill for disposal for a period of two years.

The Department's file on this matter is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Division of Waste Management, Solid Waste Section, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

Persons whose substantial interests are affected by the above proposed agency action have a right, pursuant to Sections 120.569 and 120.57, F.S., to petition for an administrative determination (hearing) on the proposed action. The petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, Marjory Stoneman Douglas Building, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, within 21 days of publication of this notice. A copy of the petition must also be mailed at the time of filing to the applicant at the address indicated. Failure to file a petition within 21 days constitutes a waiver of any right such person has to an administrative determination (hearing) pursuant to Section 120.57, F.S.

The petition shall contain the following information;

- (a) The names, address, and telephone number of each petitioner, the applicant's name and address, the Department File Number and the county in which the project is proposed;
- (b) A statement of how and when each petitioner received notice of the Department's action or proposed action;
- (c) A statement of how each petitioner's substantial interests are affected by the Department's action or proposed action;
- (d) A statement of the material facts disputed by the petitioner, if any;
- (e) A statement of facts, which the petitioner contends, warrants reversal or modification of the Department's action or proposed action;

(f) A statement of which rules or statutes the petitioner contends require reversal or modification of the Department's action or proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action the petitioner wants the Department to take with respect to the Department's action or proposed action.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the application have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of publication of this notice in the Office of General Counsel of the Department at the above address. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-5.207, Florida Administrative Code.

In accordance with Section 120.573, F.S., the Department advises that mediation is not available in this case as an alternative to filing a petition for an administrative determination.